

Patrick R. Bennett (38551-054)
Pro Se Debtor
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Harris Beach LP
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Re: PATRICK BENNETT
CASE NO. 97-65399 Chapter 7

LETTER DECISION AND ORDER

On April 12, 2004, the Debtor, Patrick R. Bennett (“Debtor” or “Bennett”), filed a motion with this Court seeking the reconsideration, alteration or amendment of a Letter Decision and Order of the Court dated March 31, 2004 (“March Order”) pursuant to Federal Rule of Civil Procedure 59(e). The motion came on for a hearing before the Court on May 27, 2004.¹

Debtor takes initial exception to those portions of the March Order which he contends “misdescribed the 4 actions” pending against him. He takes no exception to the Court’s denial of attorney’s fees for defense of “the objections to discharge,” but asserts that the Court erred in denying him the ability to retain an attorney at the bankruptcy estate’s expense as to the 2 actions that involved “defensible ‘claims’ against the estate.” It appears that the Debtor, in his reconsideration

¹ As in the past, the Debtor argued the motion telephonically from the Federal Correctional Institution at Otisville, New York, where he was then incarcerated.

motion, focuses on two actions pending against him which this Court did, in fact, overlook in its March Order. The first is an adversary proceeding commenced against the Debtor and numerous other defendants in this Court on June 6, 1996, Adversary Proceeding No. 96-70154, by Richard Breeden as Chapter 11 Trustee of The Bennett Funding Group, Inc., et al case (“Trustee Breeden”) which appears to be still pending solely against the Debtor. The second action is one commenced by the United States Department of Labor against the Debtor and others in the United States District Court for the Northern District of New York, #97-Civ-0148 (NAM).²

It appears to be Debtor’s contention that this Court must reconsider its March Order because the claims being asserted against the Debtor in the two aforementioned litigations constitute “defensible ‘claims against the estate,’” (presumably his chapter 7 bankruptcy estate), which the Trustee appointed therein, Lee E. Woodard, Esq. (“Trustee Woodard”), has largely ignored.³ Debtor asserts that, “successful defense of these ‘claims’ will greatly benefit the estate by elimination of disputed ‘claims’.”

²A review of the docket in 97-cv-0148 (the correct civil action number is 97-cv-00148), indicates that on March 16, 2004, the U.S. District Court for the Northern District of New York issued an Order granting summary judgment to the plaintiff in the action, originally, Alexis M. Herman, Acting Secretary of Labor, United States Department of Labor, directing the Debtor and another defendant, Edmund Bennett, to jointly and severally restore and make restitution to the Profit Sharing Plan, Pension Plan and 401(k) Plan of The Bennett Funding Group, in the total sum of approximately \$2.66 million. The Order further provided that the account balances of Patrick and Edmund Bennett, presumably in each of the Plans, be offset against the amount each of them owes to the Plans by virtue of the aforementioned Order. Thereafter, a judgment was entered on March 17, 2004. The docket further indicates that on April 4, 2004, the Debtor filed a motion to alter or amend the Judgment. On September 8, 2004, that motion was denied. It appears that the Debtor then filed a notice of appeal of both the March 16th and September 8th Orders, and that appeal is currently pending before the U.S. Court of Appeals for the Second Circuit.

³The Debtor also asserts in his reconsideration motion that Trustee Woodard has certain conflicts of interest in connection with each of the litigations in which the “defensable (sic) claims” are being asserted.

While the Court acknowledges that in its March Order it did not consider the additional litigation for which the Debtor now seeks “up to \$3750 (50% of the original request) for counsel to the debtor in defending ‘claims’ against the estate-97-Civ-0148 and, or 96-70154,” the Court does not believe that reconsideration will alter the result announced in the March Order. Clearly, vigorous defense of questionable claims against a chapter 7 debtor’s estate is among the fiduciary duties to be undertaken by a chapter 7 trustee. *See* § 704 (5) of the Bankruptcy Code, 11 U.S. C. §§ 101-1330 (“Code”). Until that trustee is found to have either negligently or intentionally ignored the defense of such claims, however, there is no justification for expending estate funds to retain third party professionals in their defense. While the Debtor has consistently asserted that the chapter 7 Trustee has ignored him, failed to cooperate with him and has shown unwarranted partiality toward Trustee Breeden, his assertions have been continually tainted by the Debtor’s misconception that the chapter 7 Trustee is charged with looking after the interests of the Debtor, as opposed to the interests of the creditors of the chapter 7 bankruptcy estate.

As a second basis for reconsideration, the Debtor takes issue with the Court’s statement in its March Order that Debtor is a “convicted felon serving an extended sentence for having engineered arguably the ‘largest Ponzi scheme in U.S. history,’” and, therefore, lacks the credibility the Court might otherwise ascribe to his allegations vis-a-vis the chapter 7 Trustee. The Debtor asserts that in the course of two criminal trials he was never convicted of the allegations concerning a Ponzi scheme, but rather was convicted of public integrity crimes. As a basis for reconsideration, this assertion requires little if any discussion. Credibility is an attribute that one must earn amongst ones peers by exemplary conduct. In a civilized society convicted criminals are, by the very nature of their conduct, and notwithstanding the nature of their crime, summarily stripped of certain human

attributes, one of which is almost always credibility.

On reconsideration, however, while the Court will deny the Debtor's motion, the Court is desirous of knowing the chapter 7 Trustee's position with regard to the current status of Adversary Proceeding 96-70154 and 97-Civ-0148, to the extent that either litigation may result or has resulted in a viable claim against the chapter 7 estate. Toward that end, the Court directs that the chapter 7 Trustee file with the Court and serve upon the Debtor a status report as to each litigation within thirty (30) days of the date of this Order.

IT IS SO ORDERED.

Dated at Utica, New York

this 19th day of January 2005

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge